THE WHITE HOUSE

WASHINGTON

March 12, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

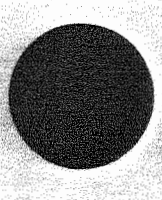
FROM: JOHN G. ROBERTS JGR
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill: H.R. 1251 -- Apportionment of Funds for Interstate Highway and Substitution Highway and Transportation Project

Counsel's Office has reviewed the above-referenced enrolled bill and signing statement, and finds no objection to them from a legal perspective.

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET



☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: David Chew

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: Enrolled Bill: H.R. 1351 - Apportionment of funds for Interstate Highway and substitution Highway and Transportation Project

ROUTE TO:		ACTION			DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD		Type of Response	Code	Completion Date YY/MM/DD
CU HOLL		ORIGINATOR	85/03/12				/ /
		Referral Note:					
CU AT 18		R	85/03/12			S	85/03/12 COB
		Referral Note:					
			/ /				/ /
		Referral Note:					
			/ /				/ /
		Referral Note:					
			/ /				/ /
		Referral Note:					

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

Document No. _____

WHITE HOUSE STAFFING MEMORANDUM

DATE: 3/12/85 **ACTION/CONCURRENCE/COMMENT DUE BY:** C.O.B. TODAY

SUBJECT: ENROLLED BILL: H.R. 1251 - Apportionment of Funds for Interstate Highway and Substitution Highway and Transportation Project

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	McMANUS	☐	☐
REGAN	☐	☑	MURPHY	☑	☐
DEAVER	☐	☑	OGLESBY	☑	☐
STOCKMAN	☐	☐	ROLLINS	☑	☐
BUCHANAN	☑	☐	SPEAKES	☐	☑
CHEW	☐P	☑SS	SVAHN	☑	☐
FIELDING	☑	☐	TUTTLE	☐	☐
FRIEDERSDORF	☑	☐	VERSTANDIG	☑	☐
FULLER	☑	☐	WHITTLESEY	☐	☐
HICKEY	☐	☐	_____	☐	☐
HICKS	☐	☐	_____	☐	☐
KINGON	☑	☐	_____	☐	☐
McFARLANE	☐	☐	_____	☐	☐

REMARKS:

Please provide any comments/edits on the bill and statement directly to me by c.o.b. TODAY.

Thanks

RESPONSE:

David L. Chew
Staff Secretary
Ext. 2702

1985 MAR 12 AM 10:40

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAR 12 1985

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 1251 - Apportionment of Funds for Interstate Highway and Substitution Highway and Transit Projects
Sponsor - Rep. Howard (D) New Jersey

Last Day for Action

March 19, 1985 - Tuesday

Purpose

To release approximately $7.2 billion of previously authorized funds from the Highway Trust Fund for Interstate highway construction and for highway and transit projects.

Agency Recommendations

Office of Management and Budget	Approval (Signing statement attached)
Department of Transportation	Approval (Signing statement attached)

Background

H.R. 1251 gives Congressional approval for the Department of Transportation to release previously withheld 1984 and 1985 funds -- in amounts as proposed by the Administration -- for Interstate highway construction and Interstate substitution projects. The latter projects are non-Interstate highway and transit projects that a State may undertake if it has chosen to withdraw yet-to-be constructed segments from the Interstate system and apply the earmarked funds to other projects. (Note: Although the enrolled bill refers to the apportionment of funds during fiscal years 1984-1986, the practical effect of the language is to release funds that have already been authorized, but not yet released, for the last half of fiscal year 1984 and all of 1985.)

Congressional approval for the release of these funds usually occurs at the beginning of each fiscal year. Approval has been delayed, however, because of disagreements during the last Congress among the House, Senate, and the Administration over approval legislation that also contained provisions which added significantly to Federal highway spending. In particular, last

year's House bill would have added approximately $4 billion to Federal spending for highway and transit programs, and the Congress was advised that the bill was a veto candidate. As a result, an impasse developed and legislation was not passed to release the funds for apportionment to the States. As noted in the Department of Transportation's enrolled bill views letter, 46 States are now without sufficient Interstate funds to move forward with projects. The States are particularly anxious that the withheld funds be released prior to the spring highway construction season.

Provisions of H.R. 1251

Your approval of H.R. 1251 will result in the release to the States of $7.2 billion. Of the $7.2 billion, the funds would be apportioned as follows: (1) $5.3 billion for Interstate construction; (2) $979 million for Interstate substitution projects; and (3) $960 million for the 85 percent minimum allocation. This latter provision ensures that each State receives in Federal-aid highway funds a minimum of 85 percent of the gasoline and other road-related taxes that it contributes to the Highway Trust Fund. By the end of fiscal year 1985, it will be necessary for Congress to enact additional approval legislation if 1986 allocations of Interstate funds are to be released on a timely basis.

H.R. 1251 is a "clean" bill; it does not contain the objectionable special interest provisions that were in last year's legislation. The colloquies in both the House and Senate also make clear that the enrolled bill does not affect the legal status of any project which is currently included or excluded from Interstate construction funding. In particular, the Senate colloquy makes clear that two major projects in Boston, Massachusetts, would not derive eligibility for funding from the enactment of H.R. 1251. This clarification was considered necessary because of contrary statements made during consideration of the bill by the House Public Works and Transportation Committee. In its enrolled bill views letter, the Department of Transportation confirms the preceding. The Department has also prepared a signing statement for your consideration. We have, however, revised the Transportation signing statement to delete a paragraph which suggests Administration approval of H.R. 1251 as a jobs creation measure. The new paragraph, to which Transportation does not object, points out that H.R. 1251 represents the expenditure of funds already provided for in the 1985 and 1986 Budgets, and that such spending is based on fees paid by the beneficiaries of highway improvements. We recommend issuance of the revised statement, which is attached.

* * * * *

H.R. 1251 passed the House by a vote of 392-4 and the Senate by voice vote.

David A. Stockman
Director

Enclosures

STATEMENT BY THE PRESIDENT

I am pleased to sign today H.R. 1251, which will release over $7 billion in urgently needed highway and transit construction funds. States can now move forward with projects to close the remaining gaps in the Interstate System, and our goal of completing the Interstate System by the early 1990's is once again attainable.

H.R. 1251 does not increase our deficit projections because expenditure of these funds is already anticipated in the 1985 and 1986 Budgets. Furthermore, this spending is backed by fees paid by highway users who will benefit from highway improvements.

I recognize that many Members of Congress were faced with some hard decisions in supporting this legislation. I am pleased with the courage they showed in laying aside numerous provisions of considerable importance to them in order not to further delay release of these funds. It was a truly bipartisan effort and I especially thank the leadership on both sides of the aisle in the Senate and House whose efforts made this possible.

Ninety-ninth Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Thursday, the third day of January, one thousand nine hundred and eighty-five

An Act

To apportion funds for construction of the National System of Interstate and Defense Highways for fiscal years 1985 and 1986 and substitute highway and transit projects for fiscal years 1984 and 1985.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. APPROVAL OF INTERSTATE COST ESTIMATE FOR FISCAL YEARS 1985 AND 1986.

(a) FISCAL YEAR 1985.—The Secretary of Transportation shall apportion for the fiscal year ending September 30, 1985, the remaining sums authorized to be appropriated for such year by section 108(b) of the Federal-Aid Highway Act of 1956, as amended, for expenditure on the National System of Interstate and Defense Highways, using the apportionment factors contained in revised table 5 of the committee print numbered 99-2 of the Committee on Public Works and Transportation of the House of Representatives.

(b) FISCAL YEAR 1986.—The Secretary of Transportation shall apportion for the fiscal year ending September 30, 1986, the sums authorized to be appropriated for such year by section 108(b) of the Federal-Aid Highway Act of 1956, as amended, for expenditure on the National System of Interstate and Defense Highways, using the apportionment factors contained in revised table 5 of the committee print numbered 99-2 of the Committee on Public Works and Transportation of the House of Representatives.

SEC. 2. APPROVAL OF INTERSTATE SUBSTITUTE COST ESTIMATE FOR FISCAL YEARS 1984 AND 1985.

(a) FISCAL YEAR 1984.—The Secretary of Transportation shall apportion for the fiscal year ending September 30, 1984, the remaining sums to be apportioned for such year under section 103(e)(4) of title 23, United States Code, for expenditure on substitute highway and transit projects, using the apportionment factors contained in the committee print numbered 99-3 of the Committee on Public Works and Transportation of the House of Representatives.

(b) FISCAL YEAR 1985.—The Secretary of Transportation shall apportion for the fiscal year ending September 30, 1985, the sums to be apportioned for such year under section 103(e)(4) of title 23, United States Code, for expenditure on substitute highway and transit projects, using the apportionment factors contained in the committee print numbered 99-3 of the Committee on Public Works and Transportation of the House of Representatives.

Speaker of the House of Representatives.

THE WHITE HOUSE

WASHINGTON

March 19, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: DOJ Draft Report on H.R. 502, the "Federal Telecommunications Privacy Act of 1985"

We have been provided with a copy of a draft Justice Department report opposing H.R. 502, a bill to codify existing GSA regulations prohibiting surreptitious, one-party consensual recording of telephone conversations on Government telephones. Both the bill and the report are essentially reruns from the last Congress, when the Wick taping episode prompted interest in the taping of telephone conversations. Justice opposes the bill because it (1) would have an adverse effect on law enforcement interests, (2) would impinge on certain communications security monitoring programs, and (3) would impose cumbersome record retention requirements. Justice concludes that the problem of taping is better addressed through flexible regulations rather than the criminal code.

The report, as noted, was submitted in the last Congress in essentially the same form; I have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

March 19, 1985

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ANALYST
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: DOJ Draft Report on H.R. 502, the "Federal Telecommunications Privacy Act of 1985"

Counsel's Office has reviewed the above-referenced draft report, and finds no objection to it from a legal perspective.

FFF:JGR:aea 3/19/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

March 19, 1985

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ANALYST
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: DOJ Draft Report on H.R. 502, the "Federal Telecommunications Privacy Act of 1985"

Counsel's Office has reviewed the above-referenced draft report, and finds no objection to it from a legal perspective.

FFF:JGR:aea 3/19/85
cc: FFFielding
JGRoberts
Subj
Chron

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

JR

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: James C. Munn

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: DOT draft report on H.R.502, the "Federal Telecommunications Privacy Act of 1985"

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CU HOLL		ORIGINATOR	85/03/13			1 1
		Referral Note:				
CU AT 18		D	85/03/13		S	85/03/24
		Referral Note:				
			1 1			1 1
		Referral Note:				
			1 1			1 1
		Referral Note:				
			1 1			1 1
		Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 13, 1985

LEGISLATIVE REFERRAL MEMORANDUM

TO: LEGISLATIVE LIAISON OFFICER

Central Intelligence Agency
Department of Defense
General Services Administration
Department of the Treasury
National Security Council

SUBJECT: Department of Justice draft report on H.R. 502, the "Federal Telecommunications Privacy Act of 1985."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than April 1, 1985.
(Note -- This report is similar to the Justice report cleared last year on H.R. 4620 (98th Congress).)

Direct your questions to Branden Blum (395-3454), the legislative attorney in this office.

James C. Murr for
Assistant Director for
Legislative Reference

Enclosure
cc: Fred Fielding
Mike Horowitz
Adrian Curtis
Mary Ann Chaffee
Frank Reeder
Arnie Donahue
Dave Hunn

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

DRAFT

Honorable Jack Brooks
Chairman
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in response to your request for the views of the Department of Justice on H.R. 502, a bill to prohibit the overhearing or recording of conversations on the federal telecommunications system.

The Department of Justice is vigorously opposed to the enactment of this legislation as we believe it would seriously interfere with federal law enforcement and national security efforts and because it does not take into consideration other situations where overhearings or recordings would be proper. In providing limited exceptions, the legislation also creates many unnecessary requirements which encumber the agencies and persons affected.

A. Background

Section 2511(2)(c) and (d) of Title 18, United States Code, operates to exempt one-party consensual interceptions from the prohibitions of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. §§2510 et. seq.)unless the interceptor (1) is not acting under color of law and (2) intercepts for a criminal, tortious, or other injurious purpose. Otherwise, there is no federal statutory law which prohibits the surreptitious, one-party consensual interception of communications.

The General Services Administration (GSA), pursuant to its authority to issue rules relating to the management and disposal of government property (40 U.S.C. §486(c)), promulgated regulations for the use of the federal telecommunications system. 41 C.F.R. Part 101-37. A portion of the regulations prohibits, with exceptions nearly identical to those contained in H.R. 502, one-party consensual interception of communications. As will be apparent from the discussion below, we do not believe that these regulations should be codified.

B. Proposed Legislation

H.R. 502 would amend title I of the Federal Property and Adminstrative Services Act of 1949 by adding a new section 113. Subsection (a) of that new section would prohibit a federal employee from causing or permitting the recording or listening in upon any telephone conversation conducted on the federal telecommunications system. It also would prohibit a federal employee from causing or permitting the recording or listening in upon any telephone conversation between a federal employee and another person if the call "involves the conduct of Government business."

Although the phrase "federal telecommunications system" is not defined in the bill, a definition exists in 41 C.F.R. §101-37.105-2. The Code of Federal Regulations definition "includes the intercity voice network, the consolidated local telephone service ... and other networks which are for the exclusive or common use of Federal agencies or support Government business." Consequently, a call made from or to nearly any federal telephone would seem to be within the bill's reach. In addition, the bill apparently would prohibit the one-party consensual recording of a telephone call if a federal employee spoke on his or her home telephone "involv[ing] the conduct of Government business."

Subsection (b) exempts from the prohibition found in subsection (a) the recording of or listening in upon a conversation without the consent of any party to it when the recording or listening in is authorized under the Omnibus Crime Control and Safe Streets Act of 1968 or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. §§ 1801 et seq.).

Subsection (c) permits the recording of or listening in upon a conversation with the consent of one party to it when the recording or listening in is performed (1) for law enforcement purposes; (2) for counterintelligence purposes; (3) for public safety purposes; (4) by a handicapped employee as a tool necessary to that employee's performance of official duties; or (5) for service monitoring purposes.

Subsection (d) permits the recording of or listening in upon a conversation with the consent of all parties to the conversation. Included within this category are telephone conferences, secretarial recordings, and other acceptable adminstrative practices conducted pursuant to strict supervisory controls to eliminate possible abuses.

Subsection (g) provides that any recording or transcription of a conversation made under (or in violation of) the Act would be a record within a system of records under the Privacy Act (section

552a of title 5) as to each party to the conversation. Subsection (h) makes any such recording or transcription "a record deposited in a public office" for the purposes of the prohibition against destroying government records, a prohibition carrying a penalty of three years imprisonment and a $2,000 fine for its violation. 18 U.S.C. §2071.

C. Effect on Law Enforcement

An analysis of subsection 113(c)(1), the provision which would permit one-party consensual interceptions of communications for law enforcement purposes, reveals that it suffers initially from a drafting problem which renders its meaning unclear. The subsection provides that the general prohibition against recording or listening in does not apply when these activities are performed for law enforcement purposes "in accordance with procedures established by the agency head, as required by the Attorney General's guidelines for the administration of the Omnibus Crime Control and Safe Streets Act of 1968, and in accordance with procedures established by the Attorney General." Nothing in the 1968 Act specifically authorizes or requires the Attorney General to establish guidelines or procedures for one-party consensual monitoring and, at present, there are no such guidelines or procedures. Consequently, because of this inaccuracy, and the ambiguity it creates for section 113(c)(1), the bill may not provide a viable law enforcement exemption.

The Attorney General has required agency heads to adopt rules concerning the consensual interception of telephone communications in former versions of his "Memorandum to the Heads and Inspectors General of Executive Departments and Agencies re: Procedures for Lawful, Warrantless Interceptions of Verbal Communications." 1/ The most recent version of that memorandum, dated November 7, 1983, contains no such requirement.

1/ This memorandum is not issued under authority or requirement of the Omnibus Crime Control and Safe Streets Act of 1968. The sources of authority for the Memorandum are Executive Order No. 11396 ("Providing for the Coordination by the Attorney General of Federal Law Enforcement and Crime Prevention Programs"), Presidential Memorandum ("Federal Law Enforcement Coordination, Policy and Practices") of September 11, 1979, Presidential Memorandum (untitled) of June 30, 1965 on, inter alia, the utilization of mechanical or electronic devices to overhear non-telephone conversations, and the inherent authority of the Attorney General as the chief law enforcement officer of the United States.

Even if the law enforcement exemption were redrafted to eliminate the reference to nonexistent guidelines and procedures, the exemption still would be troublesome. A system which envisions each agency's establishing its own regulations for law enforcement purposes when, in fact, many of these agencies have no expertise in the law enforcement arena, may not only prove difficult to coordinate but may result in regulations incompatible with effective law enforcement efforts.

Moreover, the law enforcement exemption is so narrowly drafted that it does not cover a number of situations in which a one-party consensual recording would be reasonable and proper. If, for example, a federal employee in good faith surreptitiously records a telephone conversation in which he is offered a bribe, but in doing so violates a procedure established by his agency, he would be in violation of the provisions of the bill. Consequently, a court might suppress the recording and any derivative evidence at the subsequent bribery trial. The law enforcement exception in subsection (c)(1) also does not cover situations in which a federal employee receives a threatening or obscene telephone call, or a call in which he suddenly realizes he is about to be offered a bribe, and records it in an attempt to provide evidence for use against the caller even though time constraints have precluded his complying with procedures established by his agency for making such a recording.

In short, we see no reason to forbid any listening in or recording, with the consent of one party to the conversation, made by a law enforcement official acting within the scope of his employment or by a person acting under the direction of such a law enforcement official. 2/ California, which has a statute similar in many respects to H.R. 502, effectively exempts law enforcement agents and persons assisting them from its scope. Similarly, any employee who reasonably and in good faith believes he is being contacted about a crime such as a kidnapping or extortion demand or who is the subject of an obscene or harassing telephone call should be permitted to record it. In this connection, it should be noted that Section 633.5 of the California Penal Code allows the recording by persons other than law enforcement personnel of conversations to which they are a party for the purpose of obtaining evidence relating to certain violent felonies, extortion, and bribery. We agree with this basic policy, but see no reason why one-party consensual recordings of conversations relating to any type of crime should not be permitted.

2/ By "law enforcement official" we mean any federal employee authorized by law or regulation to engage in or supervise the prevention, detection, investigation, or prosecution of violations of law and also jail and prison guards and officials.

D. Effect on Existing Government Intelligence and Security Programs

H.R. 502 expressly exempts from its prohibitions listening in or recording for counterintelligence purposes in subsection (c)(2) but this exemption is also too narrow to cover all necessary national security activities. It is not clear whether the bill authorizes an exemption for positive foreign intelligence purposes as distinct from counterintelligence activities. The recording and overhearing by an intelligence agency official acting within the scope of his employment relating to either intelligence gathering or counterintelligence activities is proper under present law and must continue. The proposed exemption is simply inadequate.

In addition, H.R. 502 may interfere with the communications security monitoring program. Communications security monitoring, currently conducted primarily by the Department of Defense and the National Security Agency, involves listening to, copying, or recording communications transmitted over official telecommunications systems to determine the degree of protection being afforded to classified information by the users of those systems. This program is intended to provide insight into the nature and extent of classified information available to foreign powers that might monitor United States communications systems, and to assess the effectiveness of measures designed to protect such information from unauthorized persons. As such, communications security monitoring encompasses a broader range of activities than those included in the counterintelligence exemption. In addition, while some electronic surveillance testing, training, and audio countermeasures programs are governed by the Foreign Intelligence Surveillance Act, 50 U.S.C. §§ 1081(b), not all communications security activities are covered by the Act, and, therefore, would not be within the exemption set forth in section 113(b) of the bill.

United States government communications security monitoring takes place both within and outside the United States. Authority to conduct the monitoring is derived from Executive Order 12333, "United States Intelligence Activities," 3 C.F.R. 200 (1981), and the National Communications Security Directive (June 20, 1979), promulgated under Executive Order 12036. Both the Directive and Executive Order 12333 require the promulgation of communications security monitoring procedures which must be approved by the Attorney General. New communications security procedures that reflect the authorities in Executive Order 12333 were approved by the Attorney General on January 9, 1984. These procedures govern the communications security activities of the Defense Department, National Security Agency, and other agencies that may have a need for such a program.

The legality of these communications security monitoring activities is based on the fact that persons using the system have been provided with one or more of several permissible forms of explicit notice that the system is subject to communications security monitoring and that by using the system they have thereby consented to the monitoring of their communications. As to individuals who are communicating with persons utilizing a monitored system, since at least one of the parties to the communication has consented, the monitoring is lawful. See, e.g., United States v. White, 401 U.S. 745 (1971); Executive Order 12333, section 3.4(b). The communications security procedures approved by the Attorney General are designed to protect the interests of such individuals by restricting the use and dissemination that may be made of their communication.

An additional aspect of these new communications security procedures that conflicts with H.R. 502 is authority that is provided for disseminating law enforcement information acquired incidentally during communications security monitoring. The new procedures would allow information relating directly to a significant crime that is acquired incidentally during the course of an authorized communications security monitoring program to be referred to the military commander or law enforcement agency having appropriate jurisdiction, in accordance with procedures defining the term "significant crime" that have yet to be approved by the Attorney General. Currently, information that requires dissemination in order to prevent serious bodily harm, significant loss of property, or compromise of classified information may be referred to the military commander or law enforcement agency having appropriate jurisdiction, upon notification of the General Counsel of the monitoring department or agency.

Under H.R. 502, however, dissemination of that information would (absent the possible applicability of any other Privacy Act disclosure exception) be limited under section (b)(7) of the Privacy Act to instances where the head of such enforcement agency made a written request specifying the particular portion of the record desired and the law enforcement activity for which the record is sought. This is an obviously unworkable dissemination scheme in a context such as this one where obtaining such law enforcement information is an inadvertent consequence of an ongoing monitoring program. In such a context the head of the appropriate law enforcement agency, being ignorant of the criminal activity and its perpetrators, or at least of the fact that evidence of such activity has been obtained, will be unable to frame a section (b)(7) request to obtain that information.

In addition to standard communications security monitoring, the Defense Department conducts another type of communications security activity, termed "hearability survey", that could be affected by the enactment of H.R. 502,. A "hearability survey" is a communications security activity in which radio communications are monitored to determine whether a particular radio signal may be intercepted by other persons or governments at one or more locations, and to determine the quality of receptions over time.

Hearability surveys are also governed by Defense Department procedures that were approved by the Attorney General on October 4, 1982, under Executive Order 12333. While the content of a conversation may be overheard during the course of a hearability survey, the procedures stipulate that such contents cannot be recorded or included in any report resulting from the survey. The procedures further provide that, where practicable, the Defense Department will obtain the consent of the owner or user of a facility that will be subjected to a hearability survey prior to conducting the survey.

Communications security, therefore, encompasses a broader range of activities than those included in the bill's exemption for one-party consensual recording or listening in for counter-intelligence purposes. Any communications security performed by a federal agency in accordance with appropriate agency procedures should be permitted if approved by the Attorney General as under current law. Such an exemption would allow the continuation of existing security monitoring programs which take place both within and outside the United States.

E. Record Retention and Penalty Provisions

Although the bill purports to prohibit one-party consensual recording or listening in to telephone conversations, the bill contains no penalty for such recording or listening in. Instead, in subsections (g) and (h), which make all recordings or transcriptions of conversations made under (or in violation) of the bill Privacy Act records, the bill penalizes something quite different -- the failure to retain, as a government record, every recording or transcript made under the Act, including interceptions made with the consent of all parties. Certainly the activity sanctioned under this bill should be the same as the major activity this bill seeks to prohibit.

In addition, the broad scope of the retention and penalty provisions of the bill may result in criminalizing behavior not only far outside that which it is the bill's purpose to prohibit, but far outside the normal bounds of the Privacy Act. For example, if a citizen calls a government employee, asks the employee whether he (the citizen) may record the call, and obtains the employee's consent, then any resulting recording would have occurred with the "permission" of the employee and may be deemed "made under the Act." Consequently, by operation of law, the tape would become a "record in a [government] system of records for the purposes of subsection (g) of the bill, and "a record deposited in a public office" for purposes of subsection (h). The citizen's erasing of his own tape could constitute a federal felony [subsection (h) and 18 U.S.C. §2701]; his disclosure to a neighbor, a misdemeanor [subsection (g) and 5 U.S.C §552a(i)(1)]. Likewise, if a secretary, in an emergency, takes shorthand transcription of a court order over the telephone, that transcription would automatically become a "record in a system of records" and "a record deposited in a public office." Its subsequent destruction, even when a copy of the court order arrives by mail, might become a felony, and its disclosure, except as specifically authorized under the Privacy Act, a misdemeanor.

These retention requirements would impose an unprecendented burden on all governmental agencies involved in the legitimate and necessary interception of telephone conversations. To comply with the Privacy Act requirements, such agencies would have to develop and implement procedures for retaining all such "records" as well as an indexing system for storing and retrieving those records.

In addition, such requirements may be inconsistent with and interfere with the effective operation of national security programs. For example, as explained by the National Security Agency in its letter commenting on H.R. 4620 dated February 21, 1984, such retention requirements are inconsistent with requirements of the National Security Agency's signals intelligence mission. In the course of fulfilling the portion of this mission that is governed by the Foreign Intelligence Surveillance Act of 1978 statutory minimization procedures require deletion of personal identifiers in many cases, making Privacy Act compliance in those cases impossible.

F. Scope of the Bill

We are also disturbed by the fact that the definition of "federal officer and employee" as contained in the bill does not expressly include Members of Congress, the federal judiciary, or their staffs. Surely there is no greater reason to include members of the Executive Branch in any restriction on listening-in or

recording. On the other hand, independent employees should not be included since private citizens are not covered and thus it is unlikely they would be familiar with these or any other special regulations imposed upon Government employees alone.

We also believe that the provisions in proposed subsections 113(e) and (f) should not be included in the bill. They contain burdensome requirements that each agency head approve written procedures for recording conversations for public safety purposes, recording by handicapped persons, and recording for service monitoring purposes. They also provide for review of these procedures by the General Services Administration. The paperwork that would be mandated is completely out of line with any benefit. We think, for example, that each handicapped employee's supervisor should determine whether he needs to make recordings and that such matters are not the proper concern of an agency head. Moreover, we think it is unwise to attempt to regulate the circumstances in which agencies listen in on conversations of their employees for service monitoring purposes as is done in proposed subsection 113(e). Each agency should be allowed to develop its own service monitoring programs once the agency head determines that supervisory monitoring is required to effectively perform the agency's duties.

CONCLUSION

As the above discussion illustrates, the Department of Justice has serious objections to H.R. 502 not only in terms of its drafting but in terms of weighing its overall need and value against the present and future anticipated and unanticipated problems it creates. As you know, Congress has labored for years to develop a balanced statutory scheme in the complex and highly technical area of electronic surveillance -- an area which already embraces three separate statutes. 3/ Any additional legislation must be crafted carefully to comport with that scheme and must avoid preventing legitimate and necessary uses of electronic

3/ The Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§2510 et seq.; The Foreign Intelligence Surveillance Act, 50 U.S.C. §§1801 et seq.; and 47 U.S.C §605 which protects the privacy of radio communications.

surveillance. Similarly, in this complex area which involves numerous federal agencies and affects a wide variety of highly sensitive activities, it is important that administrative flexibility be maintained. A statute that would flatly prohibit consensual monitoring except in very fixed and limited circumstances would severely restrict this flexibility and is an overreaction to conduct which did not involve law enforcement or intelligence activities. In sum, we believe that the nature of the activity here does not merit a federal criminal sanction. As a practical matter we believe that the only time a criminal prosecution for this conduct would be appropriate would be if the recording were made for a criminal, tortious, or otherwise injurious purpose. As we have explained, such conduct is already a felony under 18 U.S.C. 2511. The conduct addressed in this bill, the mere recording without such purpose, would be better addressed administratively through regulations in a manner that would not raise the concerns discussed above.

In any event, as this letter demonstrates, it is simply impossible to anticipate all the situations where an exemption would be proper. There should be a device for rapidly authorizing exemptions as the need materializes. Even the regulatory process, let alone the legislative process, is ill-equipped to do this.

For the reasons set forth above, the Department of Justice vigorously objects to H.R. 502 as reported by Committee. We believe the bill would have serious adverse effects upon law enforcement and intelligence activities without contributing in any meaningful way to individual privacy.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Adminstration's program.

Sincerely,

Phillip D. Brady
Acting Assistant Attorney
General

THE WHITE HOUSE

WASHINGTON

April 5, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

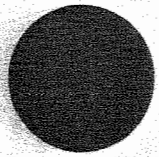
SUBJECT: Enrolled Bill H.R. 1866 -- Federal Supplemental Compensation Phaseout

As I advised your office orally last night, Counsel's Office has reviewed the above-referenced enrolled bill, and finds no objection to it from a legal perspective.

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1



Name of Correspondent: DAVE CHEW

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: Enrolled Bill H.R. 1866 - Federal Supplemental Compensation Phaseout

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CU HOLL	ORIGINATOR	85 04 04			1 1
	Referral Note:				
CU AT 18	R	85 04 04		S	85 04 04 5 30 pm
	Referral Note:				
		1 1			1 1
	Referral Note:				
		1 1			1 1
	Referral Note:				
		1 1			1 1
	Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

Document No.

Copy of bill will be sent to you when we receive it. Phyllis

WHITE HOUSE STAFFING MEMORA

DATE: 4/4/85 ACTION/CONCURRENCE/COMMENT DUE BY:

SUBJECT: Enrolled Bill H.R. 1866 - Federal Supplemental Compensation Phaseout

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	OGLESBY	☑	☐
REGAN	☐	☑	ROLLINS	☐	☐
DEAVER	☐	☑	SPEAKES	☐	☑
STOCKMAN	☐	☐	SVAHN	☑	☐
BUCHANAN	☑	☐	TUTTLE	☐	☐
CHEW	☐P	☑SS	VERSTANDIG	☐	☐
FIELDING	☑	☐	WHITTLESEY	☐	☐
FRIEDERSDORF	☑	☐	_____	☐	☐
HICKEY	☐	☐	_____	☐	☐
HICKS	☐	☐	_____	☐	☐
KINGON	☑	☐	_____	☐	☐
McFARLANE	☐	☐	_____	☐	☐

REMARKS:

Please provide any comments or recommendations directly to me by 5:30 today. Thanks.

RESPONSE:

1985 APR -4 PM 4:55

David L. Chew
Staff Secretary
Ext. 2702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Received SS
1985 APR -4 PM 4:45

APR 04 1985

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 1866 - Federal Supplemental Compensation Phaseout
Sponsor - Rep. Rostenkowski (D) Illinois

Last Day for Action

Authority to pay Federal supplemental unemployment benefits ends on Saturday, April 6, 1985.

Purpose

Allows individuals receiving Federal Supplemental Compensation when the program expired on March 31, 1985, to finish receiving their benefits.

Agency Recommendations

Office of Management and Budget	Approval
Department of Labor	Approval (Informally)
Department of the Treasury	No objection (Informally)
Council of Economic Advisers	No objection (Informally)

Discussion

The Federal Supplemental Compensation (FSC) program provides from 8 to 14 weeks of benefits, depending on the State's unemployment rate, for individuals who have exhausted their regular State unemployment benefits of up to 26 weeks. In the case of high-unemployment States, individuals can also receive up to 13 weeks under the extended benefit program before they receive FSC. FSC benefits are paid entirely by the Federal Government.

FSC was enacted as a temporary program in 1982, when the unemployment rate was over 10 percent, and subsequently was extended three times. The last extension, passed in October 1983, expired on March 31, 1985, with no benefits payable after April 6.

The Enrolled Bill

H.R. 1866 would provide for a phaseout of the FSC program. Individuals receiving FSC unemployment benefits during the final week of the program, March 31 through April 6, 1985, would receive the remaining benefits to which they are entitled. No new claims for FSC benefits would be accepted. H.R. 1866 passed the House by voice vote and passed the Senate 94-0.

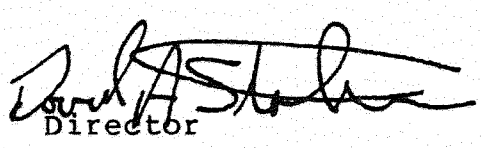
Initial congressional proposals ranged from a new permanent program to replace FSC with a complicated trigger system providing up to 30 weeks of benefits to an 18-month continuation of the current FSC program. During congressional consideration, the Administration strongly opposed any extension of the FSC program because of the economy's expansion and the availability of job training programs to assist the long-term unemployed.

In response to the Administration's opposition, the House Ways and Means Committee rejected its subcommittee's bill, which would have extended the program for 3 months, through June 30, 1985, and allowed new individuals to get benefits of up to 8 weeks, in addition to permitting those currently eligible to collect all of their remaining weeks of benefits. Instead, the House Ways and Means Committee reported H.R. 1866.

The Department of Labor estimates that H.R. 1866 will cost $168 to $183 million. This compares to the subcommittee bill, which would have cost about $440 million and an 18-month extension, which would have cost about $2.8 billion.

Recommendation

We believe that the phaseout of FSC contained in H.R. 1866 is an acceptable method for terminating the program, although we would have preferred having it expire as scheduled under current law. Accordingly, we recommend approval of the bill.



Director

Enclosures

THE WHITE HOUSE

WASHINGTON

May 13, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

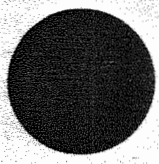
FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 597 -- Technical Amendments to Title 46 of the U.S. Code, "Shipping"

Counsel's Office has reviewed the above-referenced enrolled bill, and finds no objection to it from a legal perspective.

ID #_____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET



☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Dave Chew

☐ **MI Mail Report** **User Codes: (A)**_____ **(B)**_____ **(C)**_____

Subject: Enrolled Bill S. 597 - Technical Amendments to Title 46 of the US Code, "Shipping".

ROUTE TO: **ACTION** **DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUHOLL	ORIGINATOR	95/05/13			1 1
	Referral Note:				
CUAT 18	R	95/05/13		S	85/05/14 4pm
	Referral Note:				
		1 1			1 1
	Referral Note:				
		1 1			1 1
	Referral Note:				
		1 1			1 1
	Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments:_____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

Document No. _____

WHITE HOUSE STAFFING MEMORANDUM

DATE: 5/13/85 **ACTION/CONCURRENCE/COMMENT DUE BY:** 4:00 5/14/85

SUBJECT: Enrolled Bill S. 597 - Technical Amendments to Title 46 of the United States Code, "Shipping"

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☑	LACY	☐	☐
REGAN	☐	☑	McFARLANE	☑	☐
STOCKMAN	☐	☐	OGLESBY	☑	☐
BUCHANAN	☑	☐	ROLLINS	☐	☐
CHAVEZ	☐	☐	RYAN	☐	☐
CHEW	☐P	☑SS	SPEAKES	☐	☑
DANIELS	☐	☐	SPRINKEL	☐	☐
FIELDING	☑	☐	SVAHN	☑	☐
FRIEDERSDORF	☑	☐	TUTTLE	☐	☐
HENKEL	☐	☐	_____	☐	☐
HICKEY	☐	☐	_____	☐	☐
HICKS	☐	☐	_____	☐	☐
KINGON	☑	☐	_____	☐	☐

REMARKS:

Please provide any recommendations/comments to my office by 4:00 Tuesday, May 14th. Thanks.

RESPONSE:

1985 MAY 13 PM 3:51

David L. Chew
Staff Secretary
Ext. 2702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAY 13 PM 3:00

MAY 13 1985

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 597 - Technical Amendments to Title 46 of the United States Code, "Shipping"
Sponsor - Sen. Stevens (R) Alaska

Last Day for Action

May 18, 1985 - Saturday

Purpose

To make clarifying, technical, and conforming amendments to the "Shipping" Title of the United States Code.

Agency Recommendations

Office of Management and Budget	Approval
Department of Transportation	Approval
Department of Commerce	Approval
Department of Justice	No objection (Informally)
Department of Labor	No objection
Department of the Interior	No comment (Informally)

Discussion

S. 597 amends title 46 of the United States Code to make clarifying, technical, and conforming changes to several shipping laws. In addition to providing for consistency in the application and use of terms, as well as proper punctuation and grammatical construction, S. 597 makes three primary changes which are discussed below.

Exemption From Wage Penalty Provisions

Prior to a 1983 recodification of the shipping title, the law had exempted U.S. vessels engaged in coastwise trade from a provision which required a vessel owner to pay a seaman two days wages for each day payment of wages is delayed after termination of a voyage. This exemption existed from 1872 to 1983 when it was inadvertently repealed during the recodification. The wage penalty provisions were originally enacted to protect the merchant seamen from being abandoned in foreign ports without their pay; it was determined, however, that this protection was unnecessary for vessels operating along the coast of the United States. This restoration of the exemption will merely return the law to where it was prior to the 1983 recodification.

Coast Guard Requirements for Exposure Suits

When Congress passed the Coast Guard Authorization Act of 1984, enacted October 30, 1984, and general fisheries legislation (Public Law 98-623), enacted on November 8, 1984, both contained almost identical provisions regulating the use of exposure suits on U.S. vessels operating in cold waters. S. 597 would repeal the exposure suit provision in the earlier statute and eliminate this pointless duplication.

Application of Dangerous Cargo Provisions

S. 597 would also clarify a provision in the shipping laws to make clear that fish processing vessels carrying flammable or combustible liquid bulk cargo to remote communities in Alaska are subject to Coast Guard safety requirements. The Commercial Fishing Industry Vessel Act, enacted on July 17, 1984, contained provisions regarding fishing industry vessels which created an ambiguity with respect to such requirements for these fish processing vessels.

* * * * *

In its enrolled bill views letter recommending approval of H.R. 597, the Department of Transportation advises that there are several technical defects in the bill. While not specifying the nature of these defects, the Department advises that it will seek to remedy the defects in future legislation.

S. 597 passed both the House and the Senate by voice vote.

James M. Frey
Assistant Director for
Legislative Reference

Enclosures

THE WHITE HOUSE

WASHINGTON

May 21, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

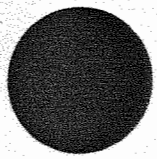
FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Draft Bill, Section-by-Section Analysis and Transmittal of Food for Progress Act

Counsel's Office has reviewed the above-referenced draft bill, and finds no objection to it from a legal perspective.

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET



☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Dave Chew

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: Draft Bill, Section-by-Section analysis, and Transmittal of Food for Progress Act

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
OMB/LL	ORIGINATOR	85/05/21			1 1
	Referral Note:				
CLAT S	F	85/05/21		S	85/05/21 2PM
	Referral Note:				
		1 1			1 1
	Referral Note:				
		1 1			1 1
	Referral Note:				
		1 1			1 1
	Referral Note:				

ACTION

DISPOSITION

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

Document No. _____

WHITE HOUSE STAFFING MEMORANDUM

DATE: 5/20/85 **ACTION/CONCURRENCE/COMMENT DUE BY:** 2:00 TOMORROW 5/21

SUBJECT: DRAFT BILL, SECTION-BY-SECTION ANALYSIS, AND TRANSMITTAL OF FOOD FOR PROGRESS ACT

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	LACY	☐	☐
REGAN	☐	☑	McFARLANE	☑	☐
STOCKMAN	☐	☐	OGLESBY	☑	☐
BUCHANAN	☐	☐	ROLLINS	☐	☐
CHAVEZ	☐	☐	RYAN	☐	☐
CHEW	☐P	☑S	SPEAKES	☐	☑
DANIELS	☐	☐	SPRINKEL	☐	☐
FIELDING	☑	☐	SVAHN	☑	☐
FRIEDERSDORF	☑	☐	TUTTLE	☐	☐
HENKEL	☐	☐	_____	☐	☐
HICKEY	☐	☐	_____	☐	☐
HICKS	☐	☐	_____	☐	☐
KINGON	☑	☐	_____	☐	☐

REMARKS:

Please provide any comments/recommendations by 2:00 p.m. tomorrow. OMB reports that the Agriculture Committee will be marking up Senator Helm's version tomorrow.

RESPONSE:

1985 MAY 21 AM 7:35

David L. Chew
Staff Secretary
Ext. 2702

THE WHITE HOUSE

WASHINGTON

May 22, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 661 --
George Milligan Control Tower

Counsel's Office has reviewed the above-referenced enrolled bill, and finds no objection to it from a legal perspective.

ID #_____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: DAVE CREW

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: Enrolled Bill S. 661 - George Mulligan Control Tower

ROUTE TO: / **ACTION** / **DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CU HOLL	ORIGINATOR	85/05/22		_	1 1
	Referral Note:				
CU AT 18	R	85/05/22		S	85/05/24 4pm
	Referral Note:				
	_	1 1		_	1 1
	Referral Note:				
	_	1 1		_	1 1
	Referral Note:				
	_	1 1		_	1 1
	Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

Document No. _____

WHITE HOUSE STAFFING MEMORANDUM

DATE: 5/22/85 **ACTION/CONCURRENCE/COMMENT DUE BY:** 4:00 p.m. 5/24/85

SUBJECT: Enrolled Bill S. 661 - "George Milligan Control Tower"

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☑	LACY	☐	☐
REGAN	☐	☑	McFARLANE	☐	☐
STOCKMAN	☐	☐	OGLESBY	☑	☐
BUCHANAN	☑	☐	ROLLINS	☐	☐
CHAVEZ	☐	☐	RYAN	☐	☐
CHEW	☐P	☑S	SPEAKES	☐	☑
DANIELS	☐	☐	SPRINKEL	☐	☐
FIELDING	☑	☐	SVAHN	☑	☐
FRIEDERSDORF	☑	☐	TUTTLE	☐	☐
HENKEL	☐	☐	_____	☐	☐
HICKEY	☐	☐	_____	☐	☐
HICKS	☐	☐	_____	☐	☐
KINGON	☐	☐	_____	☐	☐

REMARKS:

Please provide any recommendations directly to my office by 4:00 p.m. Friday, May 24th. Thanks.

RESPONSE:

1985 MAY 22 AM 11:12

David L. Chew
Staff Secretary
Ext. 2702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAY 22 1985

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 661 - "George Milligan Control Tower"
Sponsor - Sen. Packwood (R) Oregon

Last Day for Action

May 28, 1985 - Tuesday

Purpose

To designate the air traffic control tower at the Medford-Jackson County Airport, in Oregon, as the "George Milligan Control Tower".

Agency Recommendations

Office of Management and Budget	Approval
Department of Transportation	No objection

Discussion

S. 661, renaming the air traffic control tower at Medford-Jackson County Airport, in Oregon, the "George Milligan Control Tower", honors George Milligan, who since 1949 operated Mercy Flights, a nonprofit emergency air ambulance service.

According to the colloquy on the House floor, Milligan died on February 9, 1985, in a plane crash while transporting a patient by air to the Medford-Jackson County Airport. S. 661 recognizes Milligan's contribution to the people of southern Oregon and northern California who had no other means of reaching medical facilities except through the emergency air services Mercy Flights provided.

S. 661 passed both Houses by voice vote.

James M. Frey
Assistant Director for
Legislative Reference

Enclosures

THE WHITE HOUSE

WASHINGTON

June 12, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

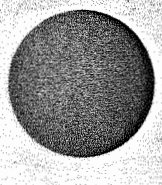
FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 873 -- Federal Employee Health and Life Insurance Benefits

Counsel's Office has reviewed the above-referenced enrolled bill, and finds no objection to it from a legal perspective.

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET



☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: DAVE CLEW

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: Enrolled Bill H.R. 873 - Federal Employee Health + Life Insurance Benefits

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUTOLL	ORIGINATOR	85/06/12			1 1
	Referral Note:				
CLAT 18	R	85/06/12		S	85/06/14 3pm
	Referral Note:				
		1 1			1 1
	Referral Note:				
		1 1			1 1
	Referral Note:				
		1 1			1 1
	Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

Document No. _____

WHITE HOUSE STAFFING MEMORANDUM

DATE: 6/12/85 ACTION/CONCURRENCE/COMMENT DUE BY: 3:00 p.m. 6/14/85

SUBJECT: Enrolled Bill H.R. 873 - Federal Employee Health and Life Insurance Benefits

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☑	LACY	☐	☐
REGAN	☐	☑	McFARLANE	☐	☐
STOCKMAN	☐	☐	OGLESBY	☑	☐
BUCHANAN	☑	☐	ROLLINS	☑	☐
CHAVEZ	☑	☐	RYAN	☐	☐
CHEW	☐P	☑S	SPEAKES	☐	☑
DANIELS	☐	☐	SPRINKEL	☐	☐
FIELDING	☑	☐	SVAHN	☑	☐
FRIEDERSDORF	☑	☐	TUTTLE	☐	☐
HENKEL	☐	☐	_____	☐	☐
HICKEY	☐	☐	_____	☐	☐
HICKS	☐	☐	_____	☐	☐
KINGON	☑	☐	_____	☐	☐

REMARKS:

Please provide any recommendations/comments to my office by 3:00 p.m. Friday, June 14th. Thanks.

RESPONSE:

1985 JUN 12 PM 3:14

David L. Chew
Staff Secretary
Ext. 2702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUN 12 1985

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 873 - Federal Employee Health and Life Insurance Benefits
Sponsor - Rep. Dicks (D) Washington and 3 others

Last Day for Action

June 18, 1985 - Tuesday

Purpose

Allows certain employee organizations to offer health insurance plans under the Federal Employee Health Benefits program and restores life and health insurance coverage to certain disability annuitants.

Agency Recommendations

Office of Management and Budget	Approval
Office of Personnel Management	Approval

Discussion

The current Federal Employee Health Benefits (FEHB) program is closed by law to employee organizations that want to offer health plans, if they did not apply to participate before January 1, 1980.

The principal purpose of H.R. 873, which passed both Houses by voice vote, is to grant a one-time opportunity for qualified employee organizations to offer plans under the FEHB program provided they apply within 90 days of enactment of the bill. To qualify under H.R. 873, employee organizations must be nationwide in scope, and cover only Federal employees who are full members in the organization and members of their families (as well as annuitants and former spouses).

The Office of Personnel Management (OPM) testified in support of similar predecessor legislation in the 98th Congress, which was specifically designed to allow the Federal Managers Association to offer health insurance under the FEHB program. OPM continues

to support this legislation because allowing additional plans to participate in the program enhances competition, which helps control costs, and increases the variety of benefit packages available to enable employees to meet their particular needs.

In addition, H.R. 873 would permit resumption of employee life and health insurance coverage by disability annuitants whose annuities have been terminated and subsequently restored (after December 31, 1983) because of recurrence of disability or loss of earning capacity. Under current law, a disability annuitant continues to participate in the employee health and life insurance programs while in disability status. If the disability annuity is terminated because of recovery from disability or restoration of earning capacity, health and life insurance coverage also terminates. When the annuity is restored, however, if the disability resumes or earning capacity diminishes, there is no provision for resumption of insurance coverage. OPM views this as an inequity, and strongly supports this portion of H.R. 873.

James M. Trey
Assistant Director for
Legislative Reference

Enclosures

THE WHITE HOUSE

WASHINGTON

June 24, 1985

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: S. 284, Amendments to Title 18, U.S. Code Relating to Rights of Witnesses Appearing Before Grand Juries

Counsel's Office has reviewed the above-referenced report, and finds no objection to it from a legal perspective.

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) ___/___/___

Name of Correspondent: Greg Ames

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: S. 284, Amendments to Title 18, U.S. Code relating to rights of witnesses appearing before grand juries.

ROUTE TO:		ACTION			DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD		Type of Response	Code	Completion Date YY/MM/DD
CU HOU		ORIGINATOR	85/06/21				/ /
		Referral Note:					
CU AT 18		R	85/06/21			S	85/07/05
		Referral Note:					
			/ /				/ /
		Referral Note:					
			/ /				/ /
		Referral Note:					
			/ /				/ /
		Referral Note:					

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

OFFICE OF MANAGEMENT AND BUDGET
ROUTE SLIP

TO ✓ Fred Fielding
Adrian Curtis
John Cooney
Karen Wilson

FROM Greg Jones 6/21

Take necessary action	☐
Approval or signature	☐
Comment	☐
Prepare reply	☐
Discuss with me	☐
For your information	☐
See remarks below	☐

DATE

REMARKS

Please give me your comments on the attached Justice report by 7/5.

Thanks.

cc: Jim Murr

OMB FORM 4

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Strom Thurmond
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Justice on S. 284, a bill "to make certain amendments to title 18, United States Code, relating to rights of witnesses appearing before grand juries."

SUMMARY OF THE LEGISLATION

The bill would add a new section to title 18 to permit a grand jury witness to bring counsel into the grand jury room. Counsel would be permitted only to advise the witness and could not properly address the attorney for the government or the grand jurors or otherwise participate in the grand jury's proceedings. If counsel were found to have exceeded his or her role in the grand jury room, the court would be authorized under the bill to remove such counsel and appoint new counsel or order the witness to obtain new counsel. The court would also be authorized under the bill to order the removal and replacement of counsel whenever necessary to insure that the activities of the grand jury are not unduly delayed or impeded.

No attorney would be permitted to represent more than one client in a grand jury proceeding if the exercise of the attorney's independent judgment on behalf of one of the clients would be or would likely be adversely affected by his or her representation of another client. If the court determined this principle to be violated, it would be authorized to order separate representation of witnesses, giving appropriate weight to the right of the individual to counsel of choice.

The bill would also require that grand jury witnesses be notified of their right to counsel upon service of the subpoenas. Witnesses financially unable to retain counsel would be entitled to appointed counsel. Nothing in the bill would affect

the contempt power of the court or its power otherwise to impose appropriate sanctions.

RECOMMENDATION

It has been the prevailing practice and tradition in the federal criminal justice system, as reflected in Rule 6(d) of the Federal Rules of Criminal Procedure, that a witness may not be accompanied by counsel inside the grand jury room. The Department of Justice has consistently taken the position over a number or years that the traditional rule serves the vital function of preserving the grand jury as an effective investigatory institution. We remain firmly of the view that enactment of legislation like S. 284 would be seriously detrimental to the interests of federal law enforcement.

We note that in March, 1983, the Judicial Conference of the United States recommended against enactment of the American Bar Association's Model Grand Jury Act, one provision of which called for counsel in the grand jury room. The Conference, in making this recommendation, accepted a report drafted by a subcommittee of, and approved in principle by, the Committee on the Operation of the Jury System. This report reads in pertinent part:

> "The negative responses center primarily on the right to counsel issue, as the majority feels [four members to one] that the presence of counsel [in the grand jury room] would significantly disrupt and inhibit grand jury investigations without providing the witness any concomitant benefit over present practice. As before, in the absence of evidence that current procedures are working an injustice, it is felt that such a sweeping change is ill-advised" (p. 23).

DISCUSSION

There are many reasons why the superficially appealing concept of permitting a witness to be accompanied by counsel before the grand jury would be unwise. In summary, they are as follows:

1. Loss of spontaneity of testimony. The sole purpose in calling a witness before the grand jury is to elicit from him whatever facts he knows that may be pertinent to the grand jury's investigation. If a witness had counsel at his side and was permitted to consult him before answering questions, in our view the fact-finding process would be severely impaired because of the tendency for the witness to become dependent upon the lawyer, and to repeat or parrot responses discussed with him, rather than to testify fully and frankly in his own words. See Silbert, Defense Counsel in the Grand Jury - The Answer to the White Collar Criminal's Prayers, 15 Amer. Cr. L. Rev. 293, 302 (1978).

For similar reasons, we point out, witnesses at trial and in other proceedings are not permitted to consult with their counsel before responding to questions, save in rare instances. 1/

2. Transformation of grand jury into adversary proceeding. The fundamental change proposed would transform the federal grand jury process into a proceeding of an adversarial nature inconsistent with the function of the grand jury as a charging (rather than a guilt-determining) body. The result of such a proposal would be substantially increased delays, which are ill affordable in our criminal justice system.

At the core of our deep-seated concern in this respect is our belief that counsel for the witness will act -- inevitably even if not intentionally -- in a manner that will disrupt and delay the grand jury's investigation. It is naive to expect that counsel for a witness facing a grand jury will fail to do everything in his power to seek to protect his client from questions that he regards as irrelevant, overbroad, or in some way technically defective. While the bill attempts to limit counsel's role by precluding him from addressing the grand jurors or the prosecutor, counsel could still as a practical matter speak through the witness. In this way, objections predicated upon various rules of evidence and procedure that have been held inapplicable to grand jury proceedings could be raised. In contrast to a court proceeding or a congressional committee hearing, there would be no official present, such as a judge or committee chairman, to rule authoritatively on such objections. To deal with any obstreperous witness would require a break in the proceedings in order to obtain the aid of a court to control the witness under penalty of contempt. We are concerned that the incidence of problems of this kind would mushroom if the long established prohibition against having counsel present in the grand jury room was abandoned.

We also doubt the practicality of mechanisms for dealing with the problem, e.g., by replacement of counsel, if the proceedings were unduly delayed or impeded. To begin with, the very act of seeking a judicial hearing on the matter would likely consume several days; and it is our belief that courts would be extremely reluctant to order a witness's counsel removed or

---

1/ A witness may be permitted to confer with counsel with regard to whether or not to invoke the Fifth Amendment. The infrequent instances in which such advice is needed as to a grand jury witness are met by the universal practice of permitting the witness, without prejudice, to leave the room for a brief period for that purpose.

replaced for a breach of the bill's provisions. There may be, in addition, at least in the case of a witness who has retained his own counsel, a substantial constitutional difficulty in ordering the witness to obtain other counsel against his wishes.

A number of judges have echoed our concerns about the practical effects of admitting defense counsel into the grand jury. Thus, for example, five judges of the United States Court of Appeals for the Second Circuit, in a memorandum accompanying their letter to the then Chairman of the House Subcommittee considering similar grand jury reform legislation in 1977, observed that:

> In practice, however, admitting counsel to the grand jury room poses the serious risk that the proceedings will be protracted and disrupted, with the court being forced to intervene repeatedly. Experience in criminal trials demonstrates that many lawyers simply would not adhere to the idealistic conception that they would limit themselves to advising their clients in sotto voce. Once in the grand jury room, many counsel, unimpeded by the presence of the court, would seek to influence the grand jury, using tactics of the type frequently employed in criminal trials, e.g., lengthy objections to questions, in which counsel refers to irrelevant prejudicial material as the basis for an objection. Advice to a witness could be given in tones that would be overheard by every grand juror. A witness' answers would be those of the attorney rather than of the witness himself. Judges would inevitably be invoked to rule on preliminary objections as to the relevancy and materiality of questions, to discipline or remove counsel from the grand jury room, and to substitute new counsel. Moreover, should a judge discipline or remove a witness' counsel, a serious question would then arise as to whether he had interfered with the witness' constitutional or statutory right to counsel of his own choice.

In short, the delays inevitably occasioned by permitting defense counsel inside the grand jury promise to be lengthy and to spawn an entire new wave of costly litigation. These effects are inconsistent with the goal adopted by the Congress in the Speedy Trial Act of 1974 of reducing crime and the danger of recidivism by requiring speedy trials. In our view the marginal benefits to witnesses which this proposal might involve are far outweighed by the disadvantages of causing the wheels of the federal criminal justice system to grind even more slowly.

3. Application to indigent witnesses. We find troublesome the bill's proposal to mandate the appointment of counsel for

indigent grand jury witnesses. This proposal could be a source of litigation, by virtue of the fact that courts in many instances would have to conduct an inquiry into the person's ability to pay; moreover, appointed counsel might not be immediately available on the date when the grand jury wishes to hear the witness's testimony. We regard the proposal as unnecessary and potentially costly, both in terms of dollars and delay. In addition, it seems unjust to provide legal counsel to an indigent witness when the vast bulk of similarly situated witnesses would not go to the expense of obtaining counsel.

4. Lack of need for the proposal and change in law since last time the Committee held hearings to consider the issue. Finally, we point out that there is a lack of demonstrated need for the proposal at this time. While any institution operated by human beings may occasionally produce abuses, and certainly any abuse is regrettable, the federal grand jury system over the years has functioned, and is now functioning, remarkably well. The instances of alleged (much less demonstrated) abuses have been few, given the fact that federal grand juries hear tens of thousands of matters each year, and that the conviction ratio on indictments returned is high (approximately 80 percent). Moreover, since this Committee last held hearings on this question in 1978, the law has changed to provide a further important safeguard against potential overreaching by prosecutors. On August 1, 1979, Rule 6 of the Federal Rules of Criminal Procedure was amended to mandate the recording of all matters occurring before the grand jury (other than its deliberations), including not only the examination of any witness, but the making of any remarks by the prosecutor. The existence of such recordings (theretofore required in only a few districts), coupled with the opportunity for subsequent review by the court, operates as a significant deterrent to prosecutorial improprieties. Moreover, the Department of Justice has substantially improved its grand jury practices, by promulgating in late 1977 a series of provisions in the United States Attorneys' Manual requiring federal prosecutors to accord to grand jury witnesses warnings and other procedural benefits well beyond those mandated by law. We are unaware of any alleged pattern of abuse since these improvements were instituted. Thus, whatever may have been the situation in the past, the case for so fundamental a change in grand jury practice as to allow defense counsel inside the grand jury room is today particularly weak.

We note that the bill does address an issue that is worthy of consideration: the multiple representation of witnesses before the grand jury. Not infrequently, particularly in investigations of organized crime, business frauds, antitrust violations, and other white collar offenses, one attorney represents several potential witnesses. At times counsel is retained by the very business, union, or other organization whose activities are under

investigation, to represent all persons connected with the group. In such situations, the individual witness may possess relevant information and would ordinarily be willing to cooperate with the investigation. Understandably, however, his willingness to cooperate may be conditioned upon the likelihood that his cooperation will not become known to his employer, fellow union members, or others whom he knows his attorney represents or with whom his attorney has been associated. The problem should not be underestimated. The Watergate Special Prosecutor, in his report to the Congress, noted that multiple legal representation before the grand jury operated "in many cases" to preclude a witness from "giving adequate consideration to the possibility of cooperating with the Government." Report, Watergate Special Prosecution Force, p. 140. This view has also been expressed by other commentators, see, e.g., Silbert, supra, 15 Amer. Cr. L. Rev., at 296-300; Alan Cole, Time For a Change: Multiple Representation Should Be Stopped., 2 Nat. J. Crim. Def. 149 (1978), and the Supreme Court of Colorado adverted to the problem in sustaining that State's recent statute which prohibits multiple representation of grand jury witnesses except with the permission of the grand jury. People ex rel. Lovasio v. J.L., 580 P.2d 23 (1978). See also generally Tague, Multiple Representation of Targets and Witnesses During a Grand Jury Investigation, 17 Amer. Cr. L. Rev. 301 (1980). Although the Colorado statute, like S. 284, links the restriction on multiple representation to the notion of permitting counsel to accompany a witness inside the grand jury room, the chilling effect on witness cooperation of multiple representation under the prevailing federal practice has become so acute that Congressional attention and action with a view toward limiting such representation is in our view independently warranted. 2/

But S. 284 does not deal effectively with the multiple representation problem. Unlike proposals that have been made in the past (e.g., in S. 1150 in the 98th Congress) which would have absolutely prohibited multiple representation of grand jury witnesses, the bill would require judges to deal with multiple representation on a case-by-case basis, having to weigh what they perceived as a possible conflict of interest against the witnesses' apparent exercise of a choice of counsel. The problems attendant upon the multiple representation of grand jury witnesses, as discussed in the paragraph immediately above, would

---

2/ A difficult problem left open by S. 284, as well as the Colorado statute, concerns the representation by closely associated counsel, perhaps partners in the same firm, of two or more grand jury witnesses in a single investigation.